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 PATRICK CONNALLY
 and DISABILITY RIGHTS
 ENFORCEMENT, EDUCATION,
 SERVICES: HELPING YOU
 HELP OTHERS

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

PATRICK CONNALLY, an individual; and)
 DISABILITY RIGHTS, ENFORCEMENT,)
 EDUCATION, SERVICES:HELPING YOU)
 HELP OTHERS, a California public benefit)
 corporation,)
 Plaintiffs,)
 v.)
 ALL STAR DOUGHNUTS; ALKAR)
 PROPERTIES LLC, a limited liability)
 company; HO CHAY LY and PAUL VAN)
 LY, individuals dba ALL STAR)
 DOUGHNUTS,)
 Defendants.)

CASE NO. CV 08-02163 PJH
Civil Rights

**FIRST AMENDED COMPLAINT FOR
 INJUNCTIVE RELIEF AND DAMAGES:**

1st CAUSE OF ACTION: For Denial of Access
 by a Public Accommodation in Violation of the
 Americans with Disabilities Act of 1990 (42
 U.S.C. §12101, *et seq.*)

2nd CAUSE OF ACTION: For Denial of Full
 and Equal Access in Violation of California
 Civil Code §§54, 54.1 and 54.3

3rd CAUSE OF ACTION: For Denial of
 Accessible Sanitary Facilities in Violation of
 California Health & Safety Code §19955, *et seq.*

4th CAUSE OF ACTION: For Denial of
 Access to Full and Equal Accommodations,
 Advantages, Facilities, Privileges and/or
 Services in Violation of California Civil Code
 §51, *et seq.* (The Unruh Civil Rights Act)

DEMAND FOR JURY

1 Plaintiffs PATRICK CONNALLY, an individual; and DISABILITY RIGHTS,
2 ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California
3 public benefit corporation (hereinafter sometimes referred to as "DREES"), complain of
4 defendants ALKAR PROPERTIES LLC, a limited liability company; HO CHAY LY and PAUL
5 VAN LY, individuals dba ALL STAR DOUGHNUTS and allege as follows:

6 **INTRODUCTION:**

7 1. This is a civil rights action for discrimination against persons with physical
8 disabilities, of which class plaintiff PATRICK CONNALLY and the membership of DREES are
9 members, for failure to remove architectural barriers structural in nature at defendants' ALL
10 STAR DOUGHNUTS, a place of public accommodation, thereby discriminatorily denying
11 plaintiffs and the class of other similarly situated persons with physical disabilities access to, the
12 full and equal enjoyment of, opportunity to participate in, and benefit from, the goods, facilities,
13 services, and accommodations thereof. Plaintiffs seek injunctive relief and damages pursuant to
14 the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*; California Civil Code
15 §§51, 51.5 and 54, *et seq.*; and California Health & Safety Code §19955, *et seq.*

16 2. Plaintiff PATRICK CONNALLY is a person with physical disabilities who, on or
17 about September 14, 2007, October 18, 2007, November 15, 2007, March 13, 2008, March 31,
18 2008, April 8, 2008 and May 14, 2008, was an invitee, guest, patron, customer at defendants'
19 ALL STAR DOUGHNUTS, in the City of San Francisco, California. At said time and place,
20 defendants failed to provide proper legal access to the ALL STAR DOUGHNUTS, which is a
21 "public accommodation" and/or a "public facility" including, but not limited to the entrance.
22 The denial of access was in violation of both federal and California legal requirements, and
23 plaintiff PATRICK CONNALLY suffered violation of his civil rights to full and equal access,
24 and was embarrassed and humiliated.

25 **JURISDICTION AND VENUE:**

26 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.
27 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*
28 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same

nucleus of operative facts and arising out of the same transactions, are also brought under parallel California law, whose goals are closely tied with the ADA, including but not limited to violations of California Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et seq.*, including §19959; Title 24 California Building Standards Code.

4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is founded on the facts that the real property which is the subject of this action is located at/near 901 Clement Street, in the City and County of San Francisco, State of California, and that plaintiffs' causes of action arose in this county.

PARTIES:

5. Plaintiff PATRICK CONNALLY is a "physically handicapped person", a "physically disabled person", and a "person with physical disabilities" (hereinafter the terms "physically disabled", "physically handicapped" and "person with physical disabilities" are used interchangeably, as these words have similar or identical common usage and legal meaning, but the legislative scheme in Part 5.5 of the Health & Safety Code uses the term "physically handicapped persons" and the Unruh Civil Rights Act, §§51, 51.5, 54, 54.1 and 55, and other statutory measures refer to protection of the rights of "physically disabled persons"). Plaintiff PATRICK CONNALLY is a "person with physical disabilities", as defined by all applicable California and United States laws. Plaintiff has severe traumatic head injury, chronic arthritis in upper extremities and constant joint inflammation, pain and swelling. Plaintiff PATRICK CONNALLY requires the use of a wheelchair to travel about in public. Consequently, plaintiff PATRICK CONNALLY is a member of that portion of the public whose rights are protected by the provisions of Health & Safety Code §19955, *et seq.* (entitled "Access to Public Accommodations by Physically Handicapped Persons") and the protections of the Unruh Civil Rights Act, Civil Code §§51 and 51.5 the Disabled Persons Act, Civil Code §54, and the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*

6. Plaintiff DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS ("DREES") is a nonprofit (501(c)(3)) organization that works with persons with disabilities to empower them to be independent in American society. DREES

1 accomplishes its goals and purposes through education on disability issues, enforcement of the
2 rights of persons with disabilities, and the provision of services to persons with disabilities, the
3 general public, public agencies and the private business sector. DREES brings this action on
4 behalf of its members, many of whom are persons with physical disabilities and whom have
5 standing in their right to bring this action.

6 7. That members of DREES, like plaintiff PATRICK CONNALLY, will or have
7 been guests and invitees at the subject ALL STAR DOUGHNUTS, and that the interests of
8 plaintiff DREES in removing architectural barriers at the subject doughnut house advance the
9 purposes of DREES to assure that all public accommodations, including the subject doughnut
10 house, are accessible to independent use by mobility-impaired persons. The relief sought by
11 plaintiff DREES as alleged herein is purely statutory in nature.

12 8. Defendants ALKAR PROPERTIES LLC, a limited liability company; HO CHAY
13 LY and PAUL VAN LY, individuals dba ALL STAR DOUGHNUTS (hereinafter alternatively
14 collectively referred to as “defendants”) are the owners and operators, lessors and/or lessees, or
15 agents of the owners, lessors and/or lessees, of the public accommodation known as ALL STAR
16 DOUGHNUTS, located at/near 901 Clement Street, San Francisco, California, or of the building
17 and/or buildings which constitute said public accommodation.

18 9. At all times relevant to this complaint, defendants ALKAR PROPERTIES LLC, a
19 limited liability company; HO CHAY LY and PAUL VAN LY, individuals dba ALL STAR
20 DOUGHNUTS, own and operate in joint venture the subject ALL STAR DOUGHNUTS as a
21 public accommodation. This business is open to the general public and conducts business
22 therein. The business is a “public accommodation” or “public facility” subject to the
23 requirements of California Civil Code §§51, 51.5 and 54, *et seq.*, Health and Safety code §19955,
24 *et seq.*, and the ADA, 42 U.S.C. §12101, *et seq.*

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1 10. At all times relevant to this complaint, defendants ALKAR PROPERTIES LLC, a
 2 limited liability company; HO CHAY LY and PAUL VAN LY, individuals dba ALL STAR
 3 DOUGHNUTS are jointly and severally responsible to identify and remove architectural barriers
 4 at the subject ALL STAR DOUGHNUTS pursuant to Code of Federal Regulations title 28,
 5 section 36.201(b), which states in pertinent part:

6 **§ 36.201 General**

7 (b) *Landlord and tenant responsibilities.* Both the landlord
 8 who owns the building that houses a place of public
 9 accommodation and the tenant who owns or operates the place of
 10 public accommodation are public accommodations subject to the
 11 requirements of this part. As between the parties, allocation of
 12 responsibility for complying with the obligations of this part may
 13 be determined by lease or other contract.

14 28 CFR §36.201(b)

15 **PRELIMINARY FACTUAL ALLEGATIONS:**

16 11. The ALL STAR DOUGHNUTS, is a bakery, located at/near 901 Clement Street,
 17 San Francisco, California. The ALL STAR DOUGHNUTS, its entrance, and its other facilities
 18 are each a “place of public accommodation or facility” subject to the barrier removal
 19 requirements of the Americans with Disabilities Act. On information and belief, each such
 20 facility has, since July 1, 1970, undergone “alterations, structural repairs and additions”, each of
 21 which has subjected the ALL STAR DOUGHNUTS and each of its facilities, its entrance to
 22 disability access requirements per the Americans with Disabilities Act Accessibility Guidelines
 23 (ADAAG), and Title 24 of the California Code of regulations (Title 24).

24 12. At all times stated herein, plaintiff PATRICK CONNALLY was a member of
 25 DREES.

26 13. At all times referred to herein and continuing to the present time, defendants, and
 27 each of them, advertised, publicized and held out the ALL STAR DOUGHNUTS as being
 28 handicapped accessible and handicapped usable.

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1 14. On or about September 14, 2007, October 18, 2007, November 15, 2007, March
2 13, 2008, March 31, 2008, April 8, 2008 and May 14, 2008, plaintiff PATRICK CONNALLY
3 was an invitee and guest at the subject ALL STAR DOUGHNUTS, for purposes of purchasing
4 doughnuts, croissants and the like.

5 15. On or about September 14, 2007, plaintiff PATRICK CONNALLY wheeled to
6 the ALL STAR DOUGHNUTS. The entrance to ALL STAR DOUGHNUTS does not have a
7 level landing. It has a slight slope. The slope is of a sufficient degree that a wheelchair will roll
8 back if the user stops at the entrance. The doorway is comprised of two doors. Each door has
9 less than thirty-two (32) inches of clear space. Each door does not meet the minimum statutory
10 requirements for access.

11 16. When Plaintiff PATRICK CONNALLY on this occasion and other occasions
12 approaches the entrance, he cannot independently open a door or can only attempt to do so with
13 great difficulty. The door pressure appeared to exceed five pounds. This is a stressful and
14 strenuous situation. Plaintiff PATRICK CONNALLY gained entry when a passer by, coming
15 into the ALL STAR DOUGHNUTS opened and held open a door to allow plaintiff PATRICK
16 CONNALLY access.

17 17. On or about September 14, 2007, October 18, 2007, November 15, 2007, March
18 13, 2008 and March 31, 2008, plaintiff PATRICK CONNALLY patronized ALL STAR
19 DOUGHNUTS and each time encountered the same architectural barriers.

20 18. On or about December 19, 2007, plaintiff PATRICK CONNALLY wrote both
21 the landlord and tenant about the door problem. Plaintiff PATRICK CONNALLY never
22 received a response to these two letters.

23 19. On or about April 1, 2008, plaintiff PATRICK CONNALLY again wrote the
24 landlord and tenant a letter. Plaintiff PATRICK CONNALLY pointed out how the situation
25 could be remedied. Simply remove the narrow double doors and put in a wide door and panel,
26 reduce the door pressure and install lever hardware. Plaintiff PATRICK CONNALLY sought an
27 early response.

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1 20. On or about April 5, 2008, Plaintiff PATRICK CONNALLY received a letter
2 from the manager of ALL STAR DOUGHNUTS. The letter in substance stated: “ I can’t make
3 everything easy for everybody...or happy. Doors open both ways. Told my employees to watch
4 for you and open doors.”

5 21. On or about April 8, 2008, plaintiff PATRICK CONNALLY returned to ALL
6 STAR DOUGHNUTS. Once again, plaintiff PATRICK CONNALLY encountered the same
7 architectural barriers.

8 22. On or about May 14, 2008, plaintiff PATRICK CONNALLY returned to ALL
9 STAR DOUGHNUTS. No remedial work had been done to the doors. On this occasion it was
10 quite warm outside, and the double doors were propped open. A patron opened the doors.

11 23. Therefore, at said times and place, plaintiff PATRICK CONNALLY, a person
12 with a disability, encountered the following inaccessible elements of the subject ALL STAR
13 DOUGHNUTS which constituted architectural barriers and a denial of the proper and legally-
14 required access to a public accommodation to persons with physical disabilities including, but
15 not limited to:

- 16 a. lack of directional signage to show accessible routes of travel, i.e
17 entrances;
18 b. lack of an accessible entrance;
19 c. lack of the International Symbol of Access (ISA); and
20 d. On personal knowledge, information and belief, other public facilities and
21 elements too numerous to list were improperly inaccessible for use by
22 persons with physical disabilities.

23 24. At all times stated herein, the existence of architectural barriers at defendants’
24 place of public accommodation evidenced “actual notice” of defendants’ intent not to comply
25 with the Americans with Disabilities Act of 1990 either then, now or in the future.

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1 25. On or about December 19, 2007 and April 1, 2008, defendants were sent a total of
2 four (4) letters by or on behalf of plaintiff PATRICK CONNALLY advising of the existence of
3 architectural barriers, requesting a response within 14 days and requesting remedial measures be
4 undertaken within 90 days or an explanation of why the time limit set could not be met and/or
5 extenuating circumstances. Plaintiff PATRICK CONNALLY received a response dated
6 April 3, 2008, which meant that the entrance would not be made accessible. Said letters are
7 attached hereto collectively as exhibit "A" and incorporated by reference as though fully set forth
8 herein. The letter written by the manager of ALL STAR DOUGHNUTS evidenced an intent not
9 to seek or engage in an early and reasonable resolution of the matter.

10 26. At all times stated herein, defendants, and each of them, did not act as reasonable
11 and prudent landlord/tenant and were "negligent per se" or at a minimum negligent for not
12 removing architectural barriers that would foreseeably prevent plaintiff PATRICK CONNALLY
13 from receiving the same goods and services as able bodied people and some of which may and did
14 pose a threat of harm and/or personal injury to people with disabilities. Therefore as a legal result
15 of defendants breach of duty to remove those barriers encountered by plaintiff, plaintiff suffered
16 bodily injury.

17 27. As a legal result of defendants ALKAR PROPERTIES LLC, a limited liability
18 company; HO CHAY LY and PAUL VAN LY, individuals dba ALL STAR DOUGHNUTS'
19 failure to act as a reasonable and prudent public accommodation in identifying, removing or
20 creating architectural barriers, policies, practices and procedures that denied access to plaintiffs
21 and other persons with disabilities, plaintiffs suffered the damages as alleged herein.

22 28. As a further legal result of the actions and failure to act of defendants, and as a
23 legal result of the failure to provide proper handicapped-accessible public facilities as set forth
24 herein, plaintiffs were denied their civil rights to full and equal access to public facilities.

25 29. Further, plaintiff PATRICK CONNALLY suffered emotional distress, mental
26 distress, mental suffering, mental anguish, which includes, but is not limited to, shame,
27 humiliation, embarrassment, anger, disappointment and worry, expectedly and naturally
28 associated with a person with physical disabilities being denied access, all to his damages as

1 prayed hereinafter in an amount within the jurisdiction of this court. No claim is being made for
2 mental and emotional distress over and above that usually associated with the discrimination and
3 physical injuries claimed, and no expert testimony regarding this usual mental and emotional
4 distress will be presented at trial in support of the claim for damages.

5 30. Defendants', and each of their, failure to remove the architectural barriers
6 complained of herein created, at the time of plaintiff PATRICK CONNALLY's first visit to said
7 public accommodation, and continues to create continuous and repeated exposure to substantially
8 the same general harmful conditions which caused plaintiff PATRICK CONNALLY harm as
9 stated herein.

10 31. Plaintiff PATRICK CONNALLY and the membership of DREES were denied
11 their rights to equal access to a public facility by defendants ALKAR PROPERTIES LLC, a
12 limited liability company; HO CHAY LY and PAUL VAN LY, individuals dba ALL STAR
13 DOUGHNUTS, because defendants ALKAR PROPERTIES LLC, a limited liability company;
14 HO CHAY LY and PAUL VAN LY, individuals dba ALL STAR DOUGHNUTS maintained a
15 doughnut house without access for persons with physical disabilities to its facilities, including but
16 not limited to the entrance, and other public areas as stated herein, and continue to the date of
17 filing this complaint to deny equal access to plaintiffs and other persons with physical disabilities
18 in these and other ways.

19 32. On information and belief, construction alterations carried out by defendants have
20 also triggered access requirements under both California law and the Americans with Disabilities
21 Act of 1990.

22 33. Plaintiffs, as described hereinbelow, seek injunctive relief to require the ALL
23 STAR DOUGHNUTS to be made accessible to meet the requirements of both California law and
24 the Americans with Disabilities Act of 1990, whichever is more restrictive, so long as defendants
25 operate the ALL STAR DOUGHNUTS as a public facility.

26 34. Plaintiffs seek damages for violation of their civil rights on September 14, 2007,
27 October 18, 2007, November 15, 2007, March 13, 2008, March 31, 2008, April 8, 2008 and May
28 14, 2008, and they seek statutory damages of not less than \$4,000, pursuant to Civil Code §52(a)

1 or alternatively \$1000 pursuant to Civil Code §54.3, for each day after his visit that the trier of
2 fact (court/jury) determines was the date that some or all remedial work should have been
3 completed under the standard that the landlord and tenant had an ongoing duty to identify and
4 remove architectural barriers where it was readily achievable to do so, which deterred plaintiff
5 PATRICK CONNALLY from returning to the subject public accommodation because of his
6 knowledge and/or belief that neither some or all architectural barriers had been removed and that
7 said premises remains inaccessible to persons with disabilities whether a wheelchair user or
8 otherwise.

9 35. On information and belief, defendants have been negligent in their affirmative duty
10 to identify the architectural barriers complained of herein and negligent in the removal of some or
11 all of said barriers.

12 36. Because of defendants' violations, plaintiffs and other persons with physical
13 disabilities are unable to use public facilities such as those owned and operated by defendants on a
14 "full and equal" basis unless such facility is in compliance with the provisions of the Americans
15 with Disabilities Act of 1990, Civil Code §54.1 and Health & Safety Code §19955, *et seq.* and
16 other accessibility law as plead herein. Plaintiffs seek an order from this court compelling
17 defendants to make the ALL STAR DOUGHNUTS accessible to persons with disabilities.

18 37. On information and belief, defendants have intentionally undertaken to modify and
19 alter existing building(s), and have failed to make them comply with accessibility requirements
20 under the requirements of ADAAG and Title 24. The acts and omission of defendants, and each
21 of them, in failing to provide the required accessible public facilities at
22 the time of plaintiff's visit and injuries, indicate actual and implied malice toward plaintiffs, and
23 despicable conduct carried out by defendants, and each of them, with a willful and conscious
24 disregard for the rights and safety of plaintiffs and other similarly situated persons, and justify a
25 trebling of damages as provided by Civil Code §§52(a) and 54.3, in order to make a more
26 profound example of defendants, and each of them, to other operators of other bakeries, doughnut
27 houses, sweet shops, and other public facilities, and to punish defendants and to carry out the
28 purposes of the Civil Code §§ 51, 51.5 and 54.

1 38. Plaintiffs are informed and believe and therefore allege that defendants ALKAR
2 PROPERTIES LLC, a limited liability company; HO CHAY LY and PAUL VAN LY, individuals
3 dba ALL STAR DOUGHNUTS, and each of them, caused the subject building(s) which
4 constitute the ALL STAR DOUGHNUTS to be constructed, altered and maintained in such a
5 manner that persons with physical disabilities were denied full and equal access to, within and
6 throughout said building(s) of the doughnut house and were denied full and equal use of said
7 public facilities. Furthermore, on information and belief, defendants have continued to maintain
8 and operate said doughnut house and/or its building(s) in such conditions up to the present time,
9 despite actual and constructive notice to such defendants that the configuration of ALL STAR
10 DOUGHNUTS and/or its building(s) is in violation of the civil rights of persons with physical
11 disabilities, such as plaintiff PATRICK CONNALLY, the membership of plaintiff DREES and
12 the disability community which DREES serves. Such construction, modification, ownership,
13 operation, maintenance and practices of such public facilities are in violation of Civil Code §§51,
14 51.5 and 54, Health and Safety Code §19955, and the ADA, 42 U.S.C. §12101, *et seq.*

15 39. On personal knowledge, information and belief, the basis of defendants' actual and
16 constructive notice that the physical configuration of the facilities including, but not limited to,
17 architectural barriers constituting the ALL STAR DOUGHNUTS and/or building(s) was in
18 violation of the civil rights of persons with physical disabilities, such as plaintiffs, includes, but is
19 not limited to, communications with invitees and guests, plaintiff PATRICK CONNALLY
20 himself, owners of other bakeries, doughnut houses, sweet shops and businesses, notices they
21 obtained from governmental agencies upon modification, improvement, or substantial repair of
22 the subject premises and other properties owned by these defendants, newspaper articles and trade
23 publications regarding the Americans with Disabilities Act of 1990 and other access laws, public
24 service announcements by former U.S. Attorney General Janet Reno between 1993 and 2000, and
25 other similar information. Defendants' failure, under state and federal law, to make the ALL
26 STAR DOUGHNUTS accessible is further evidence of defendants' conscious disregard for the
27 rights of plaintiff and other similarly situated persons with disabilities. Despite being informed of
28 such effect on plaintiff and other persons with physical disabilities due to the lack of accessible

1 facilities, defendants, and each of them, knowingly and willfully refused to take any steps to
 2 rectify the situation and to provide full and equal access for plaintiffs and other persons with
 3 physical disabilities to the ALL STAR DOUGHNUTS. Said defendants, and each of them, have
 4 continued such practices, in conscious disregard for the rights of plaintiffs and other persons with
 5 physical disabilities, up to the date of filing of this complaint, and continuing thereon. Defendants
 6 had further actual knowledge of the architectural barriers referred to herein by virtue of the
 7 demand letter addressed to the defendants and served concurrently with the summons and
 8 complaint. Said conduct, with knowledge of the effect it was and is having on plaintiffs and other
 9 persons with physical disabilities, constitutes despicable conduct in conscious disregard of the
 10 rights and safety of plaintiffs and of other similarly situated persons, justifying the imposition of
 11 treble damages per Civil Code §§52 and 54.3.

12 40. Plaintiff PATRICK CONNALLY and plaintiff DREES, on behalf of its
 13 membership and the disability community which it serves, consisting of persons with disabilities,
 14 would, could and will return to the subject public accommodation when it is made accessible to
 15 persons with disabilities.

16 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC**
 17 **ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
 18 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**
 19 (On behalf of Plaintiffs PATRICK CONNALLY and DISABILITY RIGHTS
 20 ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a
 21 California public benefit corporation and Against Defendants ALKAR PROPERTIES
 22 LLC, a limited liability company; HO CHAY LY and PAUL VAN LY, individuals dba
 23 ALL STAR DOUGHNUTS, inclusive)
 24 (42 U.S.C. §12101, *et seq.*)

25 41. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the
 26 allegations contained in paragraphs 1 through 40 of this complaint.

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42. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C. §12101 regarding persons with physical disabilities, finding that laws were needed to more fully protect:

some 43 million Americans with one or more physical or mental disabilities; [that] historically society has tended to isolate and segregate individuals with disabilities; [that] such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem; [that] the nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living and economic self-sufficiency for such individuals; [and that] the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous.

43. Congress stated as its purpose in passing the Americans with Disabilities Act of 1990 (42 U.S.C. §12102):

It is the purpose of this act (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; (3) to ensure that the Federal government plays a central role in enforcing the standards established in this act on behalf of individuals with disabilities; and (4) to invoke the sweep of Congressional authority, including the power to enforce the 14th Amendment and to regulate commerce, in order to address the major areas of discrimination faced day to day by people with disabilities.

44. As part of the Americans with Disabilities Act of 1990, Public Law 101-336 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services Operated by Private Entities" (Section 301 42 U.S.C. §12181, *et seq.*). Among the public accommodations identified for purposes of this title was:

(7) PUBLIC ACCOMMODATION - The following private entities are considered public accommodations for purposes of this title, if the operations of such entities affect commerce -

(B) a restaurant, bar or other establishment serving food or drink;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment.

42 U.S.C. §12181(7)(B)(E)

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1 45. Pursuant to §302, 42 U.S.C. §12182, “No individual shall be discriminated against
2 on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
3 privileges, advantages, or accommodations of any place of public accommodation by any person
4 who owns, leases, or leases to, or operates a place of public accommodation”.

5 46. The specific prohibitions against discrimination set forth in §302(b)(2)(a),
6 42 U.S.C. §12182(b)(2)(a) are:

7 (I) the imposition or application of eligibility criteria
8 that screen out or tend to screen out an individual with a disability
9 or any class of individuals with disabilities from fully and equally
10 enjoying any goods, services, facilities, privileges, advantages, or
accommodations, unless such criteria can be shown to be necessary
for the provision of the goods, services, facilities, privileges,
advantages, or accommodations being offered;

11 (ii) a failure to make reasonable modifications in
12 policies, practices, or procedures, when such modifications are
13 necessary to afford such goods, services, facilities, privileges,
14 advantages or accommodations to individuals with disabilities,
unless the entity can demonstrate that making such modifications
would fundamentally alter the nature of such goods, services,
facilities, privileges, advantages, or accommodations;

15 (iii) a failure to take such steps as may be necessary to
16 ensure that no individual with a disability is excluded, denied
17 services, segregated or otherwise treated differently than other
18 individuals because of the absence of auxiliary aids and services,
19 unless the entity can demonstrate that taking such steps would
fundamentally alter the nature of the good, service, facility,
privilege, advantage, or accommodation being offered or would
result in an undue burden;

20 (iv) a failure to remove architectural barriers, and
21 communication barriers that are structural in nature, in existing
facilities . . . where such removal is readily achievable; and

22 (v) where an entity can demonstrate that the removal of
23 a barrier under clause (iv) is not readily achievable, a failure to
24 make such goods, services, facilities, privileges, advantages or
accommodations available through alternative methods if such
methods are readily achievable.

25 The acts of defendants set forth herein were a violation of plaintiffs’ rights under the ADA, Public
26 Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.* - Effective
27 January 31, 1993, the standards of the ADA were also incorporated into California Civil Code
28 §51, making available the damage remedies incorporated into Civil Code §51 and 52(a) and 54.3.

1 47. The removal of the barriers complained of by plaintiffs as hereinabove alleged was
2 at all times after January 26, 1992 “readily achievable” as to the subject building(s) of ALL STAR
3 DOUGHNUTS pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and belief, if the
4 removal of all the barriers complained of herein together was not “readily achievable,” the
5 removal of each individual barrier complained of herein was “readily achievable.” On
6 information and belief, defendants’ failure to remove said barriers was likewise due to
7 discriminatory practices, procedures and eligibility criteria, as defined by 42 U.S.C. §12182
8 (b)(2)(A)(i) and (ii).

9 48. Per 42 U.S.C. §12181 (9), the term “readily achievable” means “easily
10 accomplishable and able to be carried out without much difficulty or expense.” The statute
11 defines relative “expense” in part in relation to the total financial resources of the entities
12 involved. Plaintiffs allege that properly repairing, modifying, or altering each of the items that
13 plaintiffs complain of herein were and are “readily achievable” by the defendants under the
14 standards set forth under §301(9) of the Americans with Disabilities Act. Furthermore, if it was
15 not “readily achievable” for defendants to remove each of such barriers, defendants have failed to
16 make the required services available through alternative methods which were readily achievable.

17 49. On information and belief, construction work on, and modifications of, the subject
18 building(s) of ALL STAR DOUGHNUTS occurred after the compliance date for the Americans
19 with Disabilities Act, January 26, 1992, independently triggering access requirements under Title
20 III of the ADA.

21 50. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
22 *seq.*, plaintiffs are entitled to the remedies and procedures set forth in §204(a) of the Civil Rights
23 Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiffs are being subjected to discrimination on the
24 basis of disability in violation of this title or have reasonable grounds for believing that plaintiffs
25 are about to be subjected to discrimination in violation of §302. Plaintiffs are deterred from
26 returning to or making use of the public facilities complained of herein so long as the premises
27 and defendants’ policies bar full and equal use by persons with physical disabilities.

51. 42 U.S.C. 12188 (a)(1) states: “Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this title does not intend to comply with its provisions”. Pursuant to this section, plaintiff PATRICK CONNALLY has not returned to defendants’ premises since on or about May 14, 2008, but on information and belief, alleges that defendants have continued to violate the law and deny the rights of plaintiffs and of other persons with physical disabilities to access this public accommodation. Pursuant to 42 USC §12188(a)(2), “In cases of violations of §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title.”

52. Plaintiffs seek relief pursuant to remedies set forth in §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement the Americans with Disabilities Act of 1990, including but not limited to an order granting injunctive relief and attorneys’ fees. Plaintiffs will seek attorneys’ fees conditioned upon being deemed to be the prevailing party.

Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.
 (On Behalf of Plaintiffs PATRICK CONNALLY and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants ALKAR PROPERTIES LLC, a limited liability company; HO CHAY LY and PAUL VAN LY, individuals dba ALL STAR DOUGHNUTS, inclusive)
 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

53. Plaintiffs replead and incorporate by reference as if fully set forth again herein, the allegations contained in paragraphs 1 through 52 of this complaint.

54. At all times relevant to this action, California Civil Code §54 has provided that persons with physical disabilities are not to be discriminated against because of physical handicap or disability.

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1 This section provides that:

2 (a) Individuals with disabilities . . . have the same rights as
 3 the general public to full and free use of the streets, highways,
 4 sidewalks, walkways, public buildings, medical facilities, including
 5 hospitals, clinics, and physicians' offices, and other public places.

6 55. California Civil Code §54.1 provides that persons with disabilities shall not be
 7 denied full and equal access to places of public accommodation or facilities:

8 (a)(1) Individuals with disabilities shall be entitled to full
 9 and equal access, as other members of the general public, to
 10 accommodations, advantages, facilities, medical facilities, including
 11 hospitals, clinics, and physicians' offices, and privileges of all
 12 common carriers, airplanes, motor vehicles, railroad trains,
 13 motorbuses, streetcars, boats, or any other public conveyances or
 14 modes of transportation (whether private, public, franchised,
 15 licensed, contracted, or otherwise provided), telephone facilities,
 16 adoption agencies, private schools, hotels, lodging places, places of
 17 public accommodation, amusement or resort, and other places to
 18 which the general public is invited, subject only to the conditions
 19 and limitations established by law, or state or federal regulation, and
 20 applicable alike to all persons.

21 Civil Code §54.1(a)(1)

22 56. California Civil Code §54.1 further provides that a violation of the Americans with
 23 Disabilities Act of 1990 constitutes a violation of section 54.1:

24 (d) A violation of the right of an individual under the
 25 Americans with Disabilities Act of 1990 (Public Law 101-336) also
 26 constitutes a violation of this section, and nothing in this section
 27 shall be construed to limit the access of any person in violation of
 28 that act.

Civil Code §54.1(d)

57. Plaintiff PATRICK CONNALLY and the membership of plaintiff DREES are
 persons within the meaning of Civil Code §54.1 whose rights have been infringed upon and
 violated by the defendants, and each of them, as prescribed by Civil Code §§54 and 54.1. Each
 specific architectural barrier which defendants knowingly and willfully fail and refuse to remove
 constitutes a separate act in violation of Civil Code §§54 and 54.1. Plaintiffs have been and
 continue to be denied full and equal access to defendants' ALL STAR DOUGHNUTS. As a legal
 result, plaintiffs are entitled to seek damages pursuant to a court or jury determination, in
 accordance with California Civil Code §54.3(a) for each day on which they visited or have been

1 deterred from visiting the ALL STAR DOUGHNUTS because of their knowledge and belief that
2 the ALL STAR DOUGHNUTS is inaccessible to persons with disabilities. California Civil Code
3 §54.3(a) provides:

4 Any person or persons, firm or corporation, who denies or interferes
5 with admittance to or enjoyment of the public facilities as specified
6 in Sections 54 and 54.1 or otherwise interferes with the rights of an
7 individual with a disability under Sections 54, 54.1 and 54.2 is
8 liable for each offense for the actual damages and any amount as
9 may be determined by a jury, or the court sitting without a jury, up
10 to a maximum of three times the amount of actual damages but in
11 no case less than . . . one thousand dollars (\$1,000) and . . .
12 attorney's fees as may be determined by the court in addition
13 thereto, suffered by any person denied any of the rights provided in
14 Sections 54, 54.1 and 54.2.

15 Civil Code §54.3(a)

16 58. On or about September 14, 2007, October 18, 2007, November 15, 2007, March
17 13, 2008, March 31, 2008, April 8, 2008 and May 14, 2008, plaintiff PATRICK CONNALLY
18 suffered violations of Civil Code §§54 and 54.1 in that plaintiff PATRICK CONNALLY was
19 denied entrance at the ALL STAR DOUGHNUTS and on the basis that plaintiff PATRICK
20 CONNALLY was a person with physical disabilities.

21 59. As a result of the denial of equal access to defendants' facilities due to the acts and
22 omissions of defendants, and each of them, in owning, operating and maintaining these subject
23 public facilities, plaintiffs suffered violations of plaintiffs' civil rights, including but not limited to
24 rights under Civil Code §§54, 54.1 and 54.3, and plaintiff PATRICK CONNALLY suffered
25 physical discomfort and bodily injury.

26 60. Further, plaintiff PATRICK CONNALLY suffered mental distress, mental
27 suffering, mental anguish, which includes shame, humiliation, embarrassment, frustration, anger,
28 disappointment and worry, all of which are expectedly and naturally associated with a denial of
access to a person with physical disabilities, all to plaintiff's damages as hereinafter stated.
Defendants' actions and omissions to act constituted discrimination against plaintiff on the sole
basis that plaintiffs are persons or an entity that represents persons with physical disabilities and
unable, because of the architectural barriers created and maintained by the defendants in violation

1 of the subject laws, to use the public facilities hereinabove described on a full and equal basis as
2 other persons.

3 61. Plaintiffs have been damaged by defendants', and each of their, wrongful conduct
4 and seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 and 55 for violation of
5 plaintiffs' rights as persons or an entity that represents persons with physical disabilities on or
6 about September 14, 2007, October 18, 2007, November 15, 2007, March 13, 2008, March 31,
7 2008, April 8, 2008 and May 14, 2008, and on a continuing basis since then, including statutory
8 damages, a trebling of all of actual damages, general and special damages available pursuant to
9 §54.3 of the Civil Code according to proof.

10 62. As a result of defendants', and each of their, acts and omissions in this regard,
11 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce
12 plaintiffs' rights and enforce the provisions of the law protecting access for persons with physical
13 disabilities and prohibiting discrimination against persons with physical disabilities. Pursuant to
14 the provisions of Civil Code §54.3 and §55, plaintiffs therefore will seek recovery in this lawsuit
15 for all reasonable attorneys' fees and costs incurred if deemed the prevailing party. Additionally,
16 plaintiffs' lawsuit is intended not only to obtain compensation for damages to plaintiffs, but also
17 to compel the defendants to make their facilities accessible to all members of the public with
18 disabilities, justifying public interest attorneys' fees, if deemed the prevailing party, pursuant to
19 the provisions of §1021.5 of the Code of Civil Procedure.

20 Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

21 **III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY**
22 **FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, ET. SEQ.**
23 (On Behalf of Plaintiffs PATRICK CONNALLY and DISABILITY RIGHTS,
24 ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a
25 California public benefit corporation and Against Defendants ALKAR PROPERTIES
26 LLC, a limited liability company; HO CHAY LY and PAUL VAN LY, individuals dba
27 ALL STAR DOUGHNUTS, inclusive)
28 (Health & Safety Code §19955, *et seq.*)

63. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the
allegations contained in paragraphs 1 through 62 of this complaint.

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1 64. Health & Safety Code §19955 provides in pertinent part:

2 The purpose of this part is to insure that public accommodations or
3 facilities constructed in this state with private funds adhere to the
4 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5
5 of Title 1 of the Government Code. For the purposes of this part
6 “public accommodation or facilities” means a building, structure,
7 facility, complex, or improved area which is used by the general
8 public and shall include auditoriums, hospitals, theaters, restaurants,
9 hotels, motels, stadiums, and convention centers. When sanitary
10 facilities are made available for the public, clients or employees in
11 such accommodations or facilities, they shall be made available for
12 the handicapped.

13 65. Health & Safety Code §19956, which appears in the same chapter as §19955,
14 provides in pertinent part, “accommodations constructed in this state shall conform to the
15 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government
16 Code” Health & Safety Code §19956 was operative July 1, 1970, and is applicable to all
17 public accommodations constructed or altered after that date. On information and belief, portions
18 of the ALL STAR DOUGHNUTS and/or of the building(s) were constructed and/or altered after
19 July 1, 1970, and substantial portions of the doughnut house and/or the building(s) had alterations,
20 structural repairs, and/or additions made to such public accommodations after July 1, 1970,
21 thereby requiring said doughnut house and/or building to be subject to the requirements of Part
22 5.5, §19955, *et seq.*, of the Health & Safety Code upon such alteration, structural repairs or
23 additions per Health & Safety Code §19959.

24 66. Pursuant to the authority delegated by Government Code §4450, *et seq.*, the State
25 Architect promulgated regulations for the enforcement of these provisions. Effective July 1,
26 1982, Title 24 of the California Building Standards Code adopted the California State Architect’s
27 Regulations and these regulations must be complied with as to any alterations and/or
28 modifications of ALL STAR DOUGHNUTS and/or the building(s) occurring after that date.
29 Construction changes occurring prior to this date but after July 1, 1970 triggered access
30 requirements pursuant to the “ASA” requirements, the American Standards Association
31 Specifications, A117.1-1961. On information and belief, at the time of the construction and
32 modification of said building, all buildings and facilities covered were required to conform to

1 each of the standards and specifications described in the American Standards Association
2 Specifications and/or those contained in Title 24 of the California Building Standards Code.

3 67. Bakeries such as the ALL STAR DOUGHNUTS are “public accommodations or
4 facilities” within the meaning of Health & Safety Code §19955, *et seq.*

5 68. As a result of the actions and failure to act of defendants, and as a result of the
6 failure to provide proper and legally handicapped-accessible public facilities, plaintiffs were
7 denied plaintiffs’ rights to full and equal access to public facilities and suffered a loss of plaintiffs’
8 civil rights and plaintiffs’ rights as persons with physical disabilities to full and equal access to
9 public facilities.

10 69. Attorneys’ Fees -- As a result of defendants’ acts and omissions in this regard,
11 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce
12 plaintiffs’ civil rights and enforce provisions of the law protecting access for the persons with
13 physical disabilities and prohibiting discrimination against the persons with physical disabilities,
14 and to take such action both in plaintiffs’ own interests and in order to enforce an important right
15 affecting the public interest. Plaintiffs, therefore, seek in this lawsuit the recovery of all
16 reasonable attorneys’ fees incurred, pursuant to the provisions of the Code of Civil Procedure
17 §1021.5. Plaintiffs additionally seek attorneys’ fees pursuant to Health & Safety Code §19953
18 and Civil Code §§54.3 and 55 and/or in the alternative, plaintiffs will seek attorneys’ fees, costs
19 and litigation expenses pursuant to §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 200(a)-
20 3(a)). Plaintiffs will seek attorneys’ fees conditioned upon being deemed to be the prevailing
21 party.

22 70. Plaintiffs seek injunctive relief for an order compelling defendants, and each of
23 them, to make the subject place of public accommodation readily accessible to and usable by
24 persons with disabilities.

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Wherefore, plaintiffs pray for damages and relief as hereinafter stated.

IV. FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)

(On Behalf of Plaintiffs PATRICK CONNALLY and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants ALKAR PROPERTIES LLC, a limited liability company; HO CHAY LY and PAUL VAN LY, individuals dba ALL STAR DOUGHNUTS, inclusive)
(Civil Code §51, 51.5)

71. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 70 of this complaint.

72. Defendants' actions and omissions and failure to act as a reasonable and prudent public accommodation in identifying, removing and/or creating architectural barriers, policies, practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act. The Unruh Act provides:

This section shall be known, and may be cited, as the Unruh Civil Rights Act.

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, or **disability** are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

This section shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, or **disability**.

Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure . . . nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other . . . laws.

A violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section.

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1 As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the
2 “intent” of the defendants in not complying with barrier removal is not an issue. Hence, the
3 failure on the parts of defendants, as reasonable and prudent public accommodations, in acting or
4 failing to act to identify and remove barriers can be construed as a “negligent per se” act of
5 defendants, and each of them.

6 73. The acts and omissions of defendants stated herein are discriminatory in nature and
7 in violation of Civil Code §51.5:

8 No business establishment of any kind whatsoever shall
9 discriminate against, boycott or blacklist, refuse to buy from, sell to,
10 or trade with any person in this state because of the race, creed,
11 religion, color, national origin, sex, or **disability** of the person or of
the person’s partners, members, stockholders, directors, officers,
managers, superintendents, agents, employees, business associates,
suppliers, or customers.

12 As used in this section, “person” includes any person, firm
13 association, organization, partnership, business trust, corporation,
limited liability company, or company.

14 Nothing in this section shall be construed to require any
15 construction, alteration, repair, structural or otherwise, or
modification of any sort whatsoever, beyond that construction,
16 alteration, repair or modification that is otherwise required by other
provisions of law, to any new or existing establishment, facility,
17 building, improvement, or any other structure . . . nor shall anything
in this section be construed to augment, restrict or alter in any way
18 the authority of the State Architect to require construction,
alteration, repair, or modifications that the State Architect otherwise
19 possesses pursuant to other laws.

20 74. Defendants’ acts and omissions as specified have denied to plaintiffs full and equal
21 accommodations, advantages, facilities, privileges and services in a business establishment, on the
22 basis of physical disability, in violation of Civil Code §§51 and 51.5, the Unruh Civil Rights Act.
23 Furthermore, pursuant to the 1992 amendment to California Civil Code §51, “A violation of the
24 right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336)
25 shall also constitute a violation of this section”. Plaintiffs accordingly incorporate the entirety of
26 their above cause of action for violation of the Americans with Disabilities Act at §41, *et seq.*, as
27 if replied herein.

28 ///

75. As a legal result of the violation of plaintiff PATRICK CONNALLY's civil rights as hereinabove described, plaintiff PATRICK CONNALLY has suffered general damages and bodily injury.

PRAYER:

Plaintiffs pray that this court award damages and provide relief as follows:

I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, *et seq.*)
(On Behalf of Plaintiffs PATRICK CONNALLY and DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants ALKAR PROPERTIES LLC, a limited liability company; HO CHAY LY and PAUL VAN LY, individuals dba ALL STAR DOUGHNUTS, inclusive)
(42 U.S.C. §12101, *et seq.*)

1. For injunctive relief, compelling defendants ALKAR PROPERTIES LLC, a limited liability company; HO CHAY LY and PAUL VAN LY, individuals dba ALL STAR DOUGHNUTS, inclusive, to make the ALL STAR DOUGHNUTS, located at 901 Clement Street, San Francisco, California, readily accessible to and usable by individuals with disabilities, per 42 U.S.C §12181, *et seq.*, and to make reasonable modifications in policies, practice, eligibility criteria and procedures so as to afford full access to the goods, services, facilities, privileges, advantages and accommodations being offered.

2. For attorneys' fees, litigation expenses and costs of suit, if plaintiffs are deemed the prevailing party; and

3. For such other and further relief as the court may deem proper.

II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, *ET SEQ.*

(On Behalf of Plaintiffs PATRICK CONNALLY and DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants ALKAR PROPERTIES LLC, a limited liability company; HO CHAY LY and PAUL VAN LY, individuals dba ALL STAR DOUGHNUTS, inclusive)
(California Civil Code §§54, 54.1, 54.3, *et seq.*)

1. For injunctive relief, compelling defendants ALKAR PROPERTIES LLC, a limited liability company; HO CHAY LY and PAUL VAN LY, individuals dba ALL STAR DOUGHNUTS, inclusive, to make the ALL STAR DOUGHNUTS, located at 901 Clement

Street, San Francisco, California, readily accessible to and usable by individuals with disabilities, per state law.

2. Statutory damages as afforded by Civil Code §54.3 for the date of incident and for each occasion on which plaintiffs were deterred from returning to the subject public accommodation.

3. Attorneys' fees pursuant to Civil Code §54.3 and §55 and Code of Civil Procedure §1021.5, if plaintiffs are deemed the prevailing party;

4. Treble damages pursuant to Civil Code §54.3;

5. For all costs of suit;

6. Prejudgment interest pursuant to Civil Code §3291;

7. Such other and further relief as the court may deem just and proper.

III. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, *ET SEQ.*

(On Behalf of Plaintiff PATRICK CONNALLY, and Against Defendants ALKAR PROPERTIES LLC, a limited liability company; HO CHAY LY and PAUL VAN LY, individuals dba ALL STAR DOUGHNUTS, inclusive),
(California Civil Code §§54, 54.1, 54.3, *et seq.*)

1. General and compensatory damages according to proof.

IV. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, *ET. SEQ.*

(On Behalf of Plaintiffs PATRICK CONNALLY and DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants ALKAR PROPERTIES LLC, a limited liability company; HO CHAY LY and PAUL VAN LY, individuals dba ALL STAR DOUGHNUTS, inclusive)
(Health & Safety code §19955, *et seq.*)

1. For injunctive relief, compelling defendants ALKAR PROPERTIES LLC, a limited liability company; HO CHAY LY and PAUL VAN LY, individuals dba ALL STAR DOUGHNUTS, inclusive, to make the ALL STAR DOUGHNUTS, located at 901 Clement Street, San Francisco, California, readily accessible to and usable by individuals with disabilities, per state law.

2. For attorneys' fees pursuant to Code of Civil Procedure §1021.5, Civil Code §55, and/or, alternatively, Health & Safety Code §19953, if plaintiffs are deemed the prevailing party;

3. For all costs of suit;
4. For prejudgment interest pursuant to Civil Code §3291;
5. Such other and further relief as the court may deem just and proper.

V. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)

(On Behalf of Plaintiffs PATRICK CONNALLY and DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit corporation and Against Defendants ALKAR PROPERTIES LLC, a limited liability company; HO CHAY LY and PAUL VAN LY, individuals dba ALL STAR DOUGHNUTS, inclusive)
(California Civil Code §§51, 51.5, *et seq.*)

1. All statutory damages as afforded by Civil Code §52(a) for the date of incident and for each occasion on which plaintiffs were deterred from returning to the subject public accommodation;

2. Attorneys' fees pursuant to Civil Code §52(a), if plaintiffs are deemed the prevailing party;

3. Treble damages pursuant to Civil Code §52(a);
4. For all costs of suit;
5. Prejudgment interest pursuant to Civil Code §3291; and
6. Such other and further relief as the court may deem just and proper.

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VI. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)

(On Behalf of Plaintiff PATRICK CONNALLY, and Against Defendants ALKAR PROPERTIES LLC, a limited liability company; HO CHAY LY and PAUL VAN LY, individuals dba ALL STAR DOUGHNUTS, inclusive)
(California Civil Code §§51, 51.5, *et seq.*)

1. General and compensatory damages to plaintiff PATRICK CONNALLY according to proof.

Dated: May 20, 2008

THOMAS E. FRANKOVICH
A PROFESSIONAL LAW CORPORATION

By: _____/S/_____
THOMAS E. FRANKOVICH
Attorneys for Plaintiffs PATRICK CONNALLY and
DISABILITY RIGHTS ENFORCEMENT, EDUCATION,
SERVICES:HELPING YOU HELP OTHERS, a California
public benefit corporation

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury for all claims for which a jury is permitted.

Dated: May 20, 2008

THOMAS E. FRANKOVICH
A PROFESSIONAL LAW CORPORATION

By: _____/S/_____
THOMAS E. FRANKOVICH
Attorneys for Plaintiffs PATRICK CONNALLY and
DISABILITY RIGHTS, ENFORCEMENT, EDUCATION,
SERVICES:HELPING YOU HELP OTHERS, a California
public benefit corporation

EXHIBIT A

Patrick Connally
164 N. San Pedro Rd., Apt C103
San Rafael, CA 94903

December 19, 2007

Manager
All Star Donuts
901 Clement Street
San Francisco, CA 94118

Dear Manager of All Star Donuts:

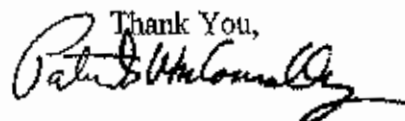
Recently (*or some time ago*) I visited All Star Donuts a couple of times. As I use a wheelchair, I had problems with the double doors and door pressure. I couldn't wheel in until either a patron opened a door and opened the other door to make it easy for me to wheel in. You need a wide door and to reduce the door pressure.

Anyway, I would really appreciate it if you would give me written assurance within the next two weeks that you will take care of these problems within the next three months. I'd like a written agreement. If you cannot do this would you forward my letter to whomever is in charge. I'd like to come back to All Star once it's accessible to me. I may still come back before you do the work just because I like the place. If there is some problem doing this please let me know. Would you please reply to my letter by FedEx to make sure I get your response?

I found out who might be able to help you. If you need information on exactly what you need to do, you can contact Pacific ADA and IT Center in Oakland at 1-800-949-4232, or the federal government at 1-800-514-0301. Either of them can send you a copy of the ADA and ADAAG codes, specifications, diagrams and manuals so that you can do the work yourself or have someone do it for you. You could also get a list of barriers common to places like yours and do your own inspection for barriers and remove them.

I was told that, if you make less than a million dollars per year and have a few employees, that you can get a \$10,000 tax credit to make your place accessible. That's a great deal. You can get information on this from the two places I mentioned above. You should talk to your accountant about it. Maybe your accountant already has this information or knows about it.

Thank you for considering my request.

Thank You,

Patrick Connally

Patrick Connally
164 N. San Pedro Rd., Apt C103
San Rafael, CA 94903

December 19, 2007

Owner of the building for
All Star Donuts
901 Clement Street
San Francisco, CA 94118

Dear Owner of Building for All Star Donuts:

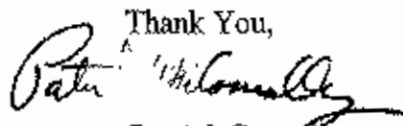
Recently (*or some time ago*) I visited All Star Donuts a couple of times. As I use a wheelchair, I had problems with the double doors and door pressure. I couldn't wheel in until either a patron opened a door and opened the other door to make it easy for me to wheel in. You need a wide door and to reduce the door pressure.

Anyway, I would really appreciate it if you would give me written assurance within the next two weeks that you will take care of these problems within the next three months. I'd like a written agreement. If you cannot do this would you forward my letter to whomever is in charge. I'd like to come back to All Star once it's accessible to me. I may still come back before you do the work just because I like the place. If there is some problem doing this please let me know. Would you please reply to my letter by FedEx to make sure I get your response?

I found out who might be able to help you. If you need information on exactly what you need to do, you can contact Pacific ADA and IT Center in Oakland at 1-800-949-4232, or the federal government at 1-800-514-0301. Either of them can send you a copy of the ADA and ADAAG codes, specifications, diagrams and manuals so that you can do the work yourself or have someone do it for you. You could also get a list of barriers common to places like yours and do your own inspection for barriers and remove them.

I was told that, if you make less than a million dollars per year and have a few employees, that you can get a \$10,000 tax credit to make your place accessible. That's a great deal. You can get information on this from the two places I mentioned above. You should talk to your accountant about it. Maybe your accountant already has this information or knows about it.

Thank you for considering my request.

Thank You,

Patrick Connally

Patrick Connally
164 N. San Pedro Rd., Apt C103
San Rafael, CA 94903

April 1, 2008

Manager
All Star Donuts
901 Clement Street
San Francisco, CA 94118

Dear Manager of All Star Donuts,

I purchase doughnuts, coffee, and croissants at All Star. But as I've written in you in the past unless both double doors are open it's hard to get in. Why, because each door is narrow and there is a slope at the base of the door. So, it's not easy to open the doors to get in. The door pressure is also heavy. The solution is simple. Put in one big door and a pane to take up the difference. Adjust the pressure down so that the door is easy to open with a lever type door handle.

Let's make everything easy and easy for everybody. Write me back when you get my letter. Fed Ex me so you make sure I get it. Hope to hear from you in the week. Thanks so much.

Sincerely,



Patrick Connally

Patrick Connally
164 N. San Pedro Rd., Apt C103
San Rafael, CA 94903

April 1, 2008

Owner of the building for
All Star Donuts
901 Clement Street
San Francisco, CA 94118

Dear Owner of the building for All Star Donuts,

I purchase doughnuts, coffee, and croissants at All Star. But as I've written in you in the past unless both double doors are open it's hard to get in. Why, because each door is narrow and there is a slope at the base of the door. So, it's not easy to open the doors to get in. The door pressure is also heavy. The solution is simple. Put in one big door and a pane to take up the difference. Adjust the pressure down so that the door is easy to open with a lever type door handle.

Let's make everything easy and easy for everybody. Write me back when you get my letter. Fed Ex me so you make sure I get it. Hope to hear from you in the week. Thanks so much.

Sincerely,


Patrick Connally

Dear Mr. Patrick

4-308

I AM The manager at the store. I appreciate you coming to the store but I cannot make everything easy for every body. I cannot make everyone happy... If you are handicapped, I've have told my workers to watch and open the doors to you.. Usually my doors are always open in the evening. My doors can be opened in both ways too.. You could push it in also when you come in. Thanks for your concern....

